

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUSTIN WALLACE,

Defendant-Appellant.

UNPUBLISHED

November 18, 2003

No. 242326

Wayne Circuit Court

LC No. 99-005668

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Defendant Justin Wallace, a juvenile, was charged with first-degree murder¹ and possession of a firearm during the commission of a felony.² A jury convicted Wallace of voluntary manslaughter³ and felony-firearm. The trial court sentenced Wallace as an adult to two years' imprisonment for the felony firearm conviction to be served consecutively with 10 to 15 years' imprisonment for the manslaughter conviction. In a prior appeal, this Court confirmed Wallace's convictions but remanded to the trial court for resentencing.⁴ The trial court resentenced Wallace to the same terms listed above and he now appeals as of right. We affirm.

I. Basic Facts And Procedural History

All of the issues that Wallace raises on appeal relate to his sentencing. At the first sentencing hearing, the trial court decided to sentence Wallace as an adult after recounting evidence presented during trial related to his actions and statements before the shooting and his acts of concealment after the shooting:

¹ MCL 750.316(1)(a).

² MCL 750.227b(1).

³ MCL 750.321.

⁴ *People v Wallace*, unpublished opinion per curiam of the Court of Appeals, issued January 29, 2002 (Docket No. 227046).

Prior to the killing, a gun owned by the Defendant's ... grandfather ... disappeared. It was later determined that the weapon used to kill in this case was that same gun.

The Defendant had stated prior to the killing some days, some time, some substantial time before the killing his disapproval of Mr. Alexander Charles, stated whatever reasons he had for that disapproval, dislike. Stated to persons that he had an animus toward Mr. Charles. Stated it to at least two, possibly three persons shortly before Mr. Charles was killed.

When Mr. Charles was a visitor in the Defendant's home, at the Defendant's suggestion, there was an agreement to go to a distant area from the community, a relatively secluded area near a creek, some distance from the community in which the Defendant lived, for the purpose of smoking marijuana. And Mr. Charles wound up dead, shot dead, admittedly by the Defendant.

Other testimony indicated that at, during, or near the time of the invitation or suggestion to go to the creek, the Defendant was seen to arm himself with the weapon and take that weapon with him to ostensibly [sic] smoke the marijuana. It was the Defendant's claim that he was groped from behind by Mr. Charles while urinating, and his immediate reaction was to turn and fire the weapon.

I have some difficulty with that as it relates to an objectively determined wound to Mr. Charles. In short, Mr. Charles was shot from the back into the back of his head.

Persons who had been at the premises prior to the killing were still there, some of them anyway, when the Defendant returned. He was seen to go about washing clothes, hiding the weapon, and there is some suggestion that he did not permit them to leave after having indicated what he had done for a period of time, after which they were released to go their various ways.

But this strikes me as being a premeditated, cold-blooded murder. And this jury has limited what the judge of the law can do by their verdict. But they have not limited and cannot limit the last aspect of the criminal justice system when it becomes necessary.

I think deliberation and premeditation may well have begun when the weapon was removed from the grandmother's home some two weeks, I believe, some time anyway, some substantial time prior to the killing. It is, therefore, my decision to sentence Mr. Wallace as an adult.

As noted above, the trial court sentenced Wallace to two years' imprisonment for the felony firearm conviction and 10 to 15 years' imprisonment for the voluntary manslaughter conviction, to be served consecutively. Wallace appealed by right and this Court issued a per curiam, unpublished opinion affirming the convictions but remanding the case to the trial court

for resentencing. This Court found that the trial court failed to make factual findings regarding each of the factors in MCL 769.1(3), relying on *People v Thenghkam*.⁵ On remand, the trial court resentenced Wallace to the same terms, two years' imprisonment for the felony firearm conviction and ten to fifteen years' imprisonment for the voluntary manslaughter conviction, stating:

I think I iterated everything required by the statute at the time of the imposition of sentence . . .

It was and is my view that Mr. Wallace committed a premeditated murder. That he planned it. That he, inferentially at least, removed the weapon from the home of his grandmother, the murder weapon, two weeks prior to the killing, and that he announced his intent to kill to friends and acquaintances that very same day. And he proceeded to effect that.

In short, I think it was a cold-blooded murder. And I think that his patterns of behavior, misbehavior, indicated that he had little or no regard for authority, that he had little or no regard for other human beings, and that being placed in a juvenile facility would not alter his activity. I'm not convinced that incarceration in an adult prison will alter Mr. Wallace's behavior . . .

The ends of the criminal process are said to be retribution, punishment and rehabilitation. It's said to be that. And Mr. Wallace is being punished for killing someone cold-bloodedly. I thought my sentence was appropriate at the time. I think so now. I know of nothing further I can or should add to it.

II. Wallace's Resentencing

A. Standard Of Review

This Court reviews a trial court's decision to sentence a juvenile as an adult for an abuse of discretion and reviews the trial court's factual findings under the clearly erroneous standard.⁶

⁵ *People v Thenghkam*, 240 Mich App 29; 610 NW2d 571 (2000).

⁶ *Thenghkam*, *supra* at 41-42, overruled in part on other grounds in *People v Petty*, 469 Mich 108, 665 NW2d 443 (2003).

B. Independent Findings Of Guilt

Wallace asserts that the trial court erroneously made an independent finding that he was guilty of murder and then abused its discretion by sentencing him based on that finding. A court may not make an independent finding of guilt and sentence upon a crime other than that for which the defendant is being sentenced.⁷ However, “where there is record support that a greater offense has been committed by a defendant, it may constitute an aggravating factor to be considered by the judge at sentencing . . .”⁸ Further, a trial court may consider evidence admitted at trial, and conduct proven by a preponderance of that evidence, in its determination of a defendant’s sentence.⁹

Here, the trial court noted evidence supporting its finding that Wallace planned the killing: that Wallace had stolen the murder weapon some two weeks prior to the shooting, that Wallace had told friends and/or acquaintances that he was going to kill the victim, that Wallace went to a secluded area with the victim, and that Wallace shot the victim in the back of the head. Rather clearly, a preponderance of the evidence showed that Wallace's killing of the victim was premeditated and deliberate. Therefore, we conclude that the trial court’s finding that the killing was premeditated was not clearly erroneous. This premeditation was an aggravating factor considered by the trial court, as permitted in MCL 769.1(3), in its decision to sentence Wallace as an adult.

C. The Nature Of The Offense

Wallace asserts that the trial court abused its discretion by relying solely on the nature of the offense when sentencing him as an adult. This argument is unsupported by the record. The record indicates that the trial court was aware of Wallace’s previous delinquent behavior as well as his good behavior and self-improvement while in custody. The trial court did not rely solely on the nature of the offense. Rather, the trial court simply found, after considering all MCL 769.1(3) factors, that the seriousness of the offense and Wallace’s premeditation outweighed his positive strides during confinement. The trial court properly gave heavier weight to the seriousness of the offense.¹⁰

D. Findings Of Fact

Wallace asserts that the trial court abused its discretion by failing to make specific findings of fact on the record as to each factor listed in MCL 769.1(3). According to the Michigan Supreme Court’s recent decision in *Petty*, the trial court is *not* required to make

⁷ *People v Fleming*, 428 Mich 408, 417-418; 410 NW2d 266 (1987); *People v Dixon*, 217 Mich App 400, 410; 552 NW2d 663 (1996).

⁸ *Fleming*, *supra* at 418.

⁹ *United States v Watts*, 519 US 148, 149; 117 S Ct 633; 136 L Ed 2d 554 (1997); *People v Gahan*, 456 Mich 264, 275 n 15; 571 NW2d 503 (1997).

¹⁰ *Petty*, *supra* at 117-118; MCL 769.1(3).

specific findings of fact for each factor in statutes like MCL 769.1(3).¹¹ The reasoning of *Thenghkam* that Wallace relies on would require such specific findings placed on the record. However, *Petty* overruled this aspect of *Thenghkam*.¹² The trial court sentenced Wallace as an adult because the seriousness of the offense and his premeditation of the killing *outweighed* the positive factors considered under MCL 769.1(3). Under *Petty*, further explanation was not required.

Because resentencing is not required, it is unnecessary to rule on Wallace's request that a different judge sentence him.

Affirmed.

/s/ William C. Whitbeck

/s/ Brian K. Zahra

/s/ Pat M. Donofrio

¹¹ *Petty*, *supra* at 117-118.

¹² *Id.* at 117.